



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2021-0333; FRL-10023-88-Region 9]

Air Plan Limited Approval and Limited Disapproval, California; Mojave Desert Air

Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a limited approval and limited disapproval of revisions to the Mojave Desert Air Quality Management District's (MDAQMD or District) portion of the California State Implementation Plan (SIP). This revision concerns oxides of nitrogen (NO_x) emissions from stationary internal combustion engines. We are proposing action on a local rule that regulates these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before [Insert date 30 days after date of publication in the *Federal Register*].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2021-0333 at <http://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the

primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Kevin Gong, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3073 or by email at gong.kevin@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. The State’s Submittal

A. *What rule did the State submit?*

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the MDAQMD and submitted by the California Air Resources Board.

TABLE 1 - SUBMITTED RULE

Rule #	Rule Title	Amended	Submitted

Rule #	Rule Title	Amended	Submitted
1160	Internal Combustion Engines	01/22/2018	05/23/2018

On November 23, 2018 the submittal for MDAQMD Rule 1160 was deemed by operation of law to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

We approved an earlier version of Rule 1160 into the SIP on November 1, 1996 (61 FR 56470).

C. What is the purpose of the submitted rule revision?

Emissions of NO_x contribute to the production of ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO_x emissions. Rule 1160 regulates NO_x emissions from stationary internal combustion engines. In the District's reasonably available control technology (RACT) SIP for the 2008 National Ambient Air Quality Standards (NAAQS), the District concluded that Rule 1160 did not meet current RACT and acknowledged the need to revise the rule, primarily the limits for NO_x, in order to implement RACT.¹ The submitted rule revisions are intended to strengthen the rule by, among other things, strengthening the NO_x limits in the rule, in order to implement current RACT. The EPA's technical support document (TSD) has more information about this rule.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere

¹ The EPA conditionally approved the District's RACT SIPs for major NO_x sources, based on the District's commitment to remedy deficiencies in a set of different NO_x rules, including Rule 1160. 83 FR 5921 (February 12, 2018). The District has also submitted revisions to the other NO_x rules subject to the conditional approval. Because the EPA has not yet acted on these other rules, we intend to address our conditional approval of the major NO_x RACT source category in a separate rulemaking once we have taken action on all of the applicable NO_x rules.

with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require RACT for each major source of NO_x in ozone nonattainment areas classified as moderate or above (see CAA sections 182(b)(2) and 182(f)). The MDAQMD regulates an ozone nonattainment area classified as Severe-15 for the 2008 8-hour ozone NAAQS and the 2015 8-hour ozone NAAQS (40 CFR 81.305), and Rule 1160 regulates multiple major sources of NO_x in the nonattainment area. Therefore, this rule must implement RACT.

Guidance and policy documents that we use to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,” EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
2. “Guidance Document for Correcting Common VOC & Other Rule Deficiencies,” EPA Region 9, August 21, 2001 (the Little Bluebook).
3. “Improving Air Quality with Economic Incentive Programs” (EPA-452/R-01-001, January 2001).
4. Alternative Control Techniques Document - NO_x Emissions from Stationary Reciprocating Internal Combustion Engines” (EPA-453/R-93-032, July 1993).

B. Does the rule meet the evaluation criteria?

Rule 1160 improves the SIP by establishing more stringent NO_x emission limits and by clarifying monitoring, recording and recordkeeping provisions. The revised rule also requires an additional ten percent reduction in allowed emissions for facilities opting to use emissions aggregation as part of an economic incentive program (EIP), consistent with the EPA’s guidance

on such provisions. The rule is largely consistent with CAA requirements and relevant guidance regarding enforceability, and RACT, except for the provisions described below. The rule is also consistent with the EPA's requirements on SIP revisions, except for the provisions described below. Rule provisions that do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What are the rule deficiencies?

These provisions do not satisfy the requirements of section 110 and part D of title I of the Act and prevent full approval of the SIP revision.

1. MDAQMD Rule 1160 section (C)(2)(b) allows for engines to comply with an alternative emission reduction provision instead of the concentration-based emission limits for NO_x. Specifically, this alternative provision allows for owners or operators of applicable equipment to submit a plan for alternative emissions reduction that would achieve an 80% or 90% reduction of emissions from a baseline emission rate. Because the rule does not clearly specify how to calculate the baseline emission rate, the rule is not sufficiently clear to constitute an enforceable emission limitation, control measure, means or technique, as required under §110(a)(2) of the Act. The rule leaves the approval of the NO_x emission reduction alternative to the District. Because the rule is not clear with respect to how to calculate the baseline emission rate, and the approval of an alternative limit is left to the District, this provision allows for overbroad discretion on the part of the Director to modify requirements of the SIP without the procedure required under §110 of the Act. In addition, the ambiguous alternative emission reduction provision could allow many units to emit more than the concentration limit in the rule by, in some cases, more than two times. These alternative limits have not been justified as meeting the RACT requirement.

2. Under section (C)(2)(b)(v), the alternative emission reduction option also allows for units operating at the same facility to aggregate their emissions in order to comply

with the percentage reduction. This type of provision constitutes an EIP under the EPA's 2001 policy referenced above. The rule provisions do not meet the criteria for EIP integrity because they fail to require that any excess emission reductions credited through the provision be surplus (i.e., not required by any other federally enforceable provision). This omission could allow reductions that are otherwise federally required to be aggregated and used to allow greater emissions at other units.

3. The compliance determination requirements described in section (E)(1)(c) do not require adequate source testing for emission units without emission control equipment. The requirements do not specify any frequency for testing beyond the initial compliance test, and do not specify what criteria must be met for certified manufacturer emission rates to be evidence of compliance.

D. Proposed action and public comment

As authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is proposing a limited approval and limited disapproval of the submitted MDAQMD Rule 1160. We will accept comments from the public on this proposal until **[Insert date 30 days after date of publication in the *Federal Register*]**. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. The submitted rule would replace the existing SIP-approved version of MDAQMD Rule 1160, which would be removed from the SIP. This approval is limited because the EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3).

If we finalize this disapproval, CAA section 110(c) would require the EPA to promulgate a federal implementation plan within 24 months of the effective date of our final action unless we approve subsequent SIP revisions that correct the deficiencies identified in section II.C of this notice.

In addition, final disapproval would trigger the offset sanction in CAA section 179(b)(2) 18 months after the effective date of a final disapproval, and the highway funding sanction in

CAA section 179(b)(1) six months after the offset sanction is imposed. A sanction will not be imposed if the EPA determines that a subsequent SIP submission corrects the deficiencies identified in our final action before the applicable deadline.

Note that the submitted rule has been adopted by the MDAQMD and the EPA's final limited disapproval would not prevent the local agency from enforcing it. The limited disapproval also would not prevent any portion of the rule from being incorporated by reference into the federally enforceable SIP as discussed in a July 9, 1992 EPA memo found at:

<https://www.epa.gov/sites/production/files/2015-07/documents/procsip.pdf>.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the MDAQMD rule described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through www.regulations.gov and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does

not impose additional requirements beyond those imposed by state law.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Dated: May 19, 2021.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

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